

Senator Stephen H. Urquhart proposes the following substitute bill:

TORTIOUS ACT ARBITRATION

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: _____

LONG TITLE

General Description:

This bill creates a new chapter in Title 78B to promote arbitration in specific tort cases.

Highlighted Provisions:

This bill:

- ▶ enacts a new chapter, Tort Arbitration, in Title 78B;
- ▶ creates filing and notice limits;
- ▶ prohibits claims for punitive damages;
- ▶ sets guidelines for rescinding an arbitration election;
- ▶ provides for the selection of a single arbitrator or panel of arbitrators;
- ▶ states that decisions by arbitrators are final, but still allows for a trial de novo;
- ▶ specifies payment obligations for parties; and
- ▶ addresses pre- and postjudgment interest.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:



57 (3) If a party submits a personal injury claim to arbitration under Subsection (2), the
58 party submitting the claim or the party's representative is limited to an arbitration award not to
59 exceed \$50,000.

60 Section 3. Section **78B-10a-103** is enacted to read:

61 **78B-10a-103. Punitive damages.**

62 A claim for punitive damages may not be made in an arbitration proceeding in
63 accordance with this chapter or any subsequent proceeding, even if the claim is later resolved
64 through a trial de novo in accordance with Section 78b-10a-108.

65 Section 4. Section **78B-10a-104** is enacted to read:

66 **78B-10a-104. Rescission -- Discovery.**

67 (1) (a) A claimant who has elected arbitration in accordance with this chapter may
68 rescind the election if the rescission is made within:

69 (i) 90 days after the election to arbitrate; and

70 (ii) not less than 30 days before any scheduled arbitration hearing.

71 (b) A claimant seeking to rescind an election to arbitrate in accordance with this
72 chapter shall:

73 (i) file a notice of the rescission of the election to arbitrate with the district court where
74 the matter was filed; and

75 (ii) send copies of the notice of the rescission of the election to arbitrate to all counsel
76 of record in the action.

77 (c) All discovery completed in anticipation of the arbitration hearing shall be available
78 for use by the parties as allowed by the Utah Rules of Civil Procedure and Utah Rules of
79 Evidence.

80 (d) A claimant who has elected to arbitrate in accordance with this chapter and then
81 rescinded the election to arbitrate may not elect to arbitrate the claim again.

82 (2) (a) Unless otherwise agreed to by the parties or by order of the court, an arbitration
83 process elected in accordance with this chapter is subject to Rule 26, Utah Rules of Civil
84 Procedure.

85 (b) Unless otherwise agreed to by the parties or ordered by the court, discovery shall be
86 completed within 150 days after the date arbitration is elected in accordance with this chapter
87 or the date the answer is filed, whichever is longer.

88 Section 5. Section **78B-10a-105** is enacted to read:

89 **78B-10a-105. Selection of arbitrator or panel -- Costs.**

90 (1) (a) Unless otherwise agreed to in writing by the parties, a claim submitted to
91 arbitration shall be resolved by a single arbitrator.

92 (b) Unless otherwise agreed to by the parties or ordered by the court, all parties shall
93 agree on a single arbitrator within 90 days of the answer of the defendant.

94 (c) If the parties are unable to agree on a single arbitrator as required by Subsection
95 (1)(b), a panel of three arbitrators shall be selected in accordance with Subsection (1)(d).

96 (d) If a panel of three arbitrators is selected:

97 (i) each side shall select one arbitrator; and

98 (ii) the arbitrators appointed under Subsection (1)(d)(i) shall jointly select one
99 additional arbitrator to be included on the panel.

100 (2) Unless otherwise agreed to in writing:

101 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
102 under Subsection (1)(a); and

103 (b) if an arbitration panel is selected under Subsection (1)(d), each party shall pay:

104 (i) the fees and costs of the arbitrator selected by that party's side; and

105 (ii) an equal share of the fees and costs of the arbitrator selected under Subsection
106 (1)(d)(ii).

107 Section 6. Section **78B-10a-106** is enacted to read:

108 **78B-10a-106. Governing provisions.**

109 (1) Except as otherwise provided in this chapter and unless otherwise agreed to in
110 writing by the parties, an arbitration proceeding conducted in accordance with this chapter shall
111 be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

112 (2) (a) Subject to the provisions of this chapter, the Utah Rules of Civil Procedure and
113 Utah Rules of Evidence apply to arbitration proceedings.

114 (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied
115 with the intent of concluding the claim in a timely and cost-efficient manner.

116 (c) Discovery shall be conducted in accordance with Rules 26 through 37 of the Utah
117 Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which
118 the matter is filed.

119 (d) Dispositive motions shall be filed, heard, and decided by the district court prior to
120 the arbitration proceeding in accordance with the court's scheduling order.

121 Section 7. Section **78B-10a-107** is enacted to read:

122 **78B-10a-107. Decision -- Award -- Court action.**

123 (1) A written decision by a single arbitrator or by a majority of the arbitration panel
124 shall constitute a final decision.

125 (2) An arbitration award issued in accordance with this chapter shall be the final
126 resolution of all personal injury claims between the parties and may be reduced to judgment by
127 the court upon motion and notice unless:

128 (a) either party, within 20 days after service of the arbitration award:

129 (i) files a notice requesting a trial de novo in the district court; and

130 (ii) serves the nonmoving party with a copy of the notice requesting a trial de novo; or

131 (b) the arbitration award has been satisfied.

132 Section 8. Section **78B-10a-108** is enacted to read:

133 **78B-10a-108. Trial de novo.**

134 (1) (a) Upon filing a notice requesting a trial de novo in accordance with Subsection
135 78B-10a-107(2):

136 (i) unless otherwise stipulated to by the parties or ordered by the court, an additional 90
137 days shall be allowed for further discovery;

138 (ii) the additional discovery time under Subsection (1)(a)(i) shall run from the notice of
139 the request for a trial de novo; and

140 (iii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
141 Procedure and Utah Rules of Evidence in the district court.

142 (b) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
143 request a jury trial with a request for trial de novo filed in accordance with Subsection
144 78B-10a-107(2)(a)(i).

145 (2) (a) If the plaintiff, as the moving party in a trial de novo requested under Subsection
146 78B-10a-107(2), does not obtain a verdict that is at least \$5,000 and 30% greater than the
147 arbitration award, the plaintiff is responsible for all of the nonmoving party's costs.

148 (b) Except as provided in Subsection (2)(c), the costs under Subsection (2)(a) shall
149 include:

150 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
151 (ii) the costs of expert witnesses and depositions.
152 (c) An award of costs under this Subsection (2) may not exceed \$6,000.
153 (3) (a) If a defendant, as the moving party in a trial de novo requested in accordance
154 with Subsection 78B-10a-107(2), does not obtain a verdict that is at least 30% less than the
155 arbitration award, the defendant is responsible for all of the nonmoving party's costs.
156 (b) Except as provided in Subsection (3)(c), the costs under Subsection (3)(a) shall
157 include:
158 (i) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and
159 (ii) the costs of expert witnesses and depositions.
160 (c) An award of costs in accordance with this Subsection (3) may not exceed \$6,000.
161 (4) For purposes of determining whether a party's verdict is greater or less than the
162 arbitration award under Subsections (2) and (3), a court may not consider any recovery or other
163 relief granted on a claim for damages if the claim for damages:
164 (a) was not fully disclosed in writing prior to the arbitration proceeding; or
165 (b) was not disclosed in response to discovery contrary to the Utah Rules of Civil
166 Procedure.
167 (5) If a district court determines, upon a motion of the nonmoving party, that the
168 moving party's use of the trial de novo process was filed in bad faith as defined in Section
169 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
170 (6) (a) If a defendant requests a trial de novo under Subsection 78B-10a-107(2), the
171 total verdict at trial may not exceed \$15,000 above any available limits of insurance coverage
172 and the total verdict may not exceed \$65,000.
173 (b) If a plaintiff requests a trial de novo under Subsection 78B-10a-107(2), the verdict
174 at trial may not exceed \$50,000.
175 Section 9. Section **78B-10a-109** is enacted to read:
176 **78B-10a-109. Interest.**
177 All arbitration awards issued in accordance with this chapter shall bear prejudgment
178 interest pursuant to Sections 15-1-1 and 78B-5-824, and postjudgment interest pursuant to
179 Section 15-1-4.